

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

| | | |
|---------------------------|---|-----------------------|
| MATTHEW OKONKWO, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | CV. NO. 1:07cv1062MHT |
| |) | CR. NO. 1:06cr101MHT |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

**GOVERNMENT’S RESPONSE TO PETITIONER’S MOTION
FOR DEPORTATION PROCEEDING INJUNCTION IN SUPPORT OF
MOTION UNDER 28 U.S.C. § 2255 HABEAS CORPUS**

COMES NOW the United States of America, by and through its attorney, Leura G. Canary, United States Attorney, and, in compliance with this Court’s order, responds to Petitioner’s Motion for Deportation Proceeding Injunction in Support of Motion Under 28 U.S.C. § 2255 Habeas Corpus, as follows:

In his motion, Okonkwo seeks to stay his deportation based on what he alleges is a deportation order issued sometime in the late 1980’s. (Mot. ¶2) However, this Court lacks jurisdiction to consider Okonkwo’s motion.

Exclusive jurisdiction over review of deportation orders lies in the courts of appeal. *See* 8 U.S.C. § 1252(a)(1) (“Judicial review of a final order of removal . . . is governed only by chapter 158 of Title 28,” relating to court of appeals review of agency decisions); *id.* § 1252(a)(5) (petition for review filed with court of appeals “shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter”); *De La Teja v. United States*, 321 F.3d 1357, 1365 (11th Cir. 2003) (interpreting prior version of section 1252(g) as precluding district court jurisdiction over alien’s challenge to removal decision). Similarly, only the

court of appeals would have jurisdiction to issue a stay of deportation. *See* 8 U.S.C. § 1252(b)(3)(B); *Scheerer v. United States Attorney General*, 445 F.3d 1311, 1315 & n.5 (11th Cir. 2006) (noting court of appeals' denial of alien's emergency motion to stay removal).

Any doubts over a habeas court's power in the immigration area stay were erased in 2005, when Congress amended the procedures governing judicial review of immigration decisions to read as follows:

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including [28 U.S.C. § 2241], or any other habeas corpus provision, and [28 U.S.C. §§ 1361 and 1651], no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g); *see also id.* § 1252(b)(9) (precluding habeas courts from reviewing orders entered in connection with proceedings to remove an alien). Therefore, this Court lacks jurisdiction to grant Okonkwo any relief in connection with his removal.

CONCLUSION

For the reasons set forth above, the Government requests that Okonkwo's Motion for Deportation Proceeding Injunction be denied.

Respectfully submitted this 15th day of January, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: Matthew Okonkwo, McRae Correctional Facility, #11926-002, P.O. Box 30, McRae Georgia 31055.

Respectfully submitted,

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